85-1701

Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1985

ELEANOR POWELL,

Petitioner,

v.

CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF VIRGINIA, CONNECTICUT GENERAL LIFE INSURANCE COMPANY, AMERICAN TELEPHONE AND TELEGRAPH, INC., AND AT & T COMMUNICATIONS OF VIRGINIA, INC.,

Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether punitive or extracontractual damages are available for breaches of fiduciary duty under §§ 101, 404 and 503 of the Employee Retirement Income Security Act where the action is brought under §§ 502(a)(1) and (3) of that Act.

2. Whether § 514 of the Employee Retirement Income Security Act preempts state law claims for intentional infliction of emotional distress, breach of contract, breach of a duty of fair dealing and the Virginia Unfair Practices Act where the plan administrator of a self-insured fund is an insurance company.

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ELEANOR POWELL,

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v.

CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF VIRGINIA, CONNECTICUT GENERAL LIFE INSURANCE COMPANY, AMERICAN TELEPHONE AND TELEGRAPH, INC., AND AT & T COMMUNICATIONS OF VIRGINIA, INC.,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in this case on December 18, 1985.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 780 F.2d 419 (4th Cir. 1985), and is reproduced in Appendix A. The order of the United States District Court for the Eastern District of Virginia is not reported. It is reproduced in Appendix B.

JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals for the Fourth Circuit was entered on December 18, 1985. By order dated March 21, 1986, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including April 17, 1986. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The pertinent provisions of §§ 101, 404, 502, 503 and 514 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§ 1021, 1104, 1132,

1133 and 1144 (1982) as well as Va. Code Ann. §§ 38.1-1(10), 38.1-52.1 and 38.1-50A. These provisions are reproduced in pertinent part in Appendix C.

STATEMENT OF THE CASE

Petitioner, Eleanor Powell, was employed by respondent C & P Telephone Company of Virginia (C & P) as a long distance telephone operator from approximately 1960 to January, 1977. During this period AT & T was the parent company of C & P. In January, 1978, Mrs. Powell retired due to severe back pain caused by a degenerative disc disease. From January, 1977 to January, 1978, Mrs. Powell received sick pay benefits. In February, 1978, a determination was made by the Employee Benefits Committee of C & P that Mrs. Powell was entitled to benefits under the long term disability plan maintained by C & P for its non-management employees. Payments were begun under the plan retroactive to January 30, 1978.

In March, 1978, C & P entered into an Administrative Services Agreement with

respondent Connecticut General Life Insurance Company ("Connecticut General") whereby Connecticut General became responsible for the administration of benefits under the long term disability plan, including the evaluation and payment of claims. During the period from 1978 to 1983, Connecticut General paid the disability benefits to Mrs. Powell. On two occasions, Connecticut General terminated Mrs. Powell's benefits, but in both cases the benefits were reinstated. In 1983, Connecticut General terminated all benefits when Mrs. Powell received social security benefits. Connecticut General also demanded a return of a portion of the monies paid her under the plan, alleging an overpayment on the grounds that the plan was intended only to supplement other income to bring the total to a base level.

During the period from 1978 to 1983, Mrs. Powell received various letters and other correspondence from Connecticut General requesting additional information and tests regarding her disability. She contacted both

C & P and Connecticut General regarding these requests but no satisfactory answer was received. Mrs. Powell contends that some of the information sought by Connecticut General was already in its possession or was otherwise unnecessary. Mrs. Powell also contends that she requested a copy of her claim file, but no copy was ever received.

On July 17, 1984, Mrs. Powell filed an amended complaint in the United States District Court for the Eastern District of Virginia. The action was brought under § 502 of ERISA, 29 U.S.C. § 1132, and raised several pendent state claims. The complaint sought compensatory and punitive damages under the following five counts:

1. Breach of fiduciary duties under §§ 101, 404 and 503 of ERISA;

2. Intentional infliction of emotional distress;

3. Violation of Virginia's Unfair Trade Practices Act;

4. Breach of implied duty of good faith and fair dealing;

5. Breach of contract.

On respondents' motion for summary

judgment, the district court dismissed the complaint on the grounds that the state law claims were preempted by ERISA and that punitive damages are not available under ERISA. The claim for other damages under ERISA was denied on the grounds that Mrs. Powell had already received all benefits due her under the disability plan (App. B at 2).

The Fourth Circuit affirmed the district court's ruling as to the preemption of the state law claims as well as the denial of punitive damages under ERISA. The court held that the state law claims "related to" an employee benefit plan and were therefore subject to the preemption provision of § 514 of ERISA, 29 U.S.C. § 1144 (App. A at 5). The court also held that although Connecticut General is an insurance company, it was not acting as such in its role of plan administrator and therefore the exception for laws regulating insurance was not applicable (App. A. at 10-11). With respect to punitive damages the court held that such damages did not constitute "other appropriate equitable

relief" under § 502(a)(3), 29 U.S.C. § 1132(a)(3), and that such damages were therefore not available under ERISA (App. A at 13).

REASONS FOR GRANTING WRIT

This case presents two important questions regarding the nature of relief available to plan participants and beneficiaries under ERISA and state law. Both of these questions have widespread significance beyond this case and are the subject of conflicting decisions in lower courts. Related issues have previously been raised before this Court, but the Court has not resolved the issues raised here. A resolution of these issues is necessary to settle the conflicts among the lower courts and to insure that ERISA is uniformly applied.

I

THE FOURTH CIRCUIT'S PUNITIVE DAMAGES RULING REFLECTS A CONTINUING CONFLICT BETWEEN DECISIONS OF FEDERAL COURTS.

Review of the Fourth Circuit Court of

Appeals' ruling on punitive and extracontractual damages is essential to resolve a continuing conflict regarding the imposition of such damages under ERISA. Since the enactment of ERISA in 1974, the federal courts have been sharply divided on the availability of punitive damages under ERISA. The leading case denying the availability of such damages is Dependahl v. Falstaff Brewing Corp., 653 F.2d 1208 (8th Cir.), cert. denied, 454 U.S. 968 (1981), in which the court stated that punitive damages are not available under ERISA. 653 F.2d at 1216 (dictum). On the other hand, the Ninth Circuit ruled in Russell v. Massachusetts Mutual Life Insurance Co., 722 F.2d 482 (9th Cir.), rev'd, 105 S. Ct. 3085 (1985) and Winterrowd v. David Freedman & Co., 724 F.2d 823 (9th Cir. 1984), that punitive damages could be imposed under ERISA.

The Russell decision was subsequently reversed by the Court, but the reversal was expressly limited to actions brought under § 409 of ERISA. 105 S. Ct. at 3089 n.5. Moreover, the Court's decision in Russell was

based primarily on language peculiar to § 409 and has little effect on cases brought under different sections of the Act. Accordingly, the Russell decision does not resolve the question raised here.

Various federal district courts have considered the availability of punitive damages in non-§ 409 cases, and different results have been reached. Some courts have held that punitive damages are available where a fiduciary breaches his fiduciary duties, see, e.g., Miner v. International Typographical Union Negotiated Pension Plan, 601 F. Supp. 1390, 1393 (D. Colo. 1985); Gilliken v. Hughes, 609 F. Supp. 178, 182 (D. Del. 1985), while others have ruled that such damages are available under specific sections of ERISA. E.g., Bittner v. Sadoff & Rudoy Industries, 490 F. Supp. 534 (E.D. Wis. 1980) (punitive damages available for violation of § 440); cf. Kann v. Keystone Resources, Inc., 575 F. Supp. 1084, 1094-95 (W.D. Pa. 1983) (no punitive damages under the facts). On the other hand, some courts

have found that punitive damages may not be imposed under ERISA in non-§ 409 cases. E.g., Meyer v. Phillip Morris, Inc., 575 F. Supp. 1232 (E.D. Mo. 1983) (no punitive damages under § 104(b)(1) and (3)); Zittrower v. Warco, 582 F. Supp. 1471 (N.D. Ga. 1984) (no punitive damages under ERISA); Diano v. Central States Health, Welfare & Pension Funds, 551 F. Supp. 861 (N.D. Ohio 1982) (same).

The continuing confusion in this area is reflected in Wilson v. Pye, 6 Empl. Ben. Cas. (BNA) 2761 (N.D. Ill. 1986), a case decided after the Russell decision was handed down. In that case, the plaintiff alleged violations of §§ 104, 404 and 406 and brought the action under §§ 502(a)(1), (2) and (3). The court denied punitive damages under the facts of the case but noted that the exact contours of the majority's reasoning in Russell were ambiguous, id. at 2764, and added that such damages may be available where the plan participant is individually injured by a fiduciary's breach and the action is brought under § 502(a)(3).

It is essential that the Court resolve the continuing controversy regarding the availability of punitive damages under these circumstances.

II

THE DENIAL OF PUNITIVE DAMAGES BY THE LOWER COURT IS INCONSISTENT WITH THE LANGUAGE AND INTENT OF ERISA.

The Fourth Circuit's ruling misapplies the law applicable in the instant case and reflects a basic misunderstanding of the purposes of ERISA. Section 502(a)(3) allows a plan participant to obtain "appropriate equitable relief," which the Fourth Circuit restricted to relief available under the common law of trusts. The court then found that punitive damages are not available under that law and are therefore not available under ERISA. This analysis fails on two counts. First, there is a substantial body of opinion which provides that punitive damages are available under the common law of trusts where fraud or malice is proven. G.G. Bogert & G.T. Bogert, The Law of Trusts

and Trustees § 862 (2d ed. 1982); Ghiardi & Kircher, Punitive Damages: Law & Practice § 20.06 (1985). Under Virginia law, punitive damages may be received where malice is established, Peacock Buick, Inc. v. Durkin, 221 Va. 1133, 277 S.E.2d 225, 227 (1981), and the petitioner, Mrs. Powell, has attempted to meet that standard in this case.

Second, although Congress intended to engraft trust law principles onto the enforcement scheme of ERISA, Congress also intended that the "special nature" of employee benefit plans be considered. H.R. Rep. No. 93-1280, 93rd Cong., 2d Sess. reprinted in 1974 U.S. Code Cong. & Ad. News 5038, 5083. Thus, as was noted in Justice Brennan's concurring opinion in Russell,

> [c]ourts must always bear in mind the ultimate consideration whether allowance or disallowance of particular relief would best effectuate the underlying purposes of ERISA--enforcement of strict fiduciary standards of care in the administration of all aspects of pension plans and promotion of the best interests of participants and beneficiaries.

105 S. Ct. at 3099. Further, "[c]ourts have

also recognized that in enacting ERISA, Congress made more exacting the requirements of the common law of trusts relating to employee benefit trust funds." Donovan v. Mazzola, 716 F.2d 1226, 1231 (9th Cir. 1984) (quoted in Russell v. Massachusetts Mutual Life Insurance Co., supra, 105 S. Ct. at 3098 n.17 (concurring opinion)).

The Fourth Circuit's failure to recognize this fundamental rule, as expressed in Justice Brennan's concurring opinion in Russell and by other courts, has resulted in its erroneous decision. Moreover, the result is directly contrary to the result reached by the federal district court in Miner v. International Typographical Union Negotiated Pension Plan, supra, which held that punitive damages are consistent with the overall design of ERISA and the common law of trusts. 601 F. Supp. at 1393.

A decision of this Court is therefore necessary to overturn the erroneous decision of the lower court and to provide further guidance as to the availability of punitive

damages in non-§ 409 cases.

III

THE DECISION BELOW REGARDING PREEMPTION OF STATE LAW CONFLICTS WITH THE DECISIONS OF OTHER FEDERAL COURTS AND IS CONTRARY TO THE GENERAL PURPOSES OF ERISA.

In Shaw v. Delta Air Lines, Inc., 463 U.S. 85 (1983), this Court ruled that a state law which directly affected the substantive terms of an employee benefit plan was a law which "related to" that plan and was therefore preempted by § 514 of ERISA, 29 U.S.C. § 1144. In so ruling, the Court added that some state actions may affect employee benefit plans in "too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan" but declined to draw a line between the two situations. 463 U.S. at 100 n.21.

In the absence of a definitive Supreme Court ruling, lower courts have reached conflicting conclusions regarding the preemption of state causes of action of general application. Thus, while some courts

have held that ERISA does not preempt an action for intentional infliction of emotional distress, e.g., International Union, United Automobile, Aerospace & Agricultural Implement Workers of America v. Federal Forge, Inc., 583 F. Supp. 1350, 1357 (W.D. Mich. 1984); Bobo v. 1950 Pension Plan, 548 F. Supp. 623 (W.D.N.Y. 1982), other courts have found such claims to be preempted. E.g., Russell v. Massachusetts Mutual Life Insurance Co., supra, 722 F.2d at 485; Hurn v. Retirement Fund Trust of Plumbing Industry, 424 F. Supp. 80, 82 (C.D. Cal. 1976). A similar conflict exists as to breach of contract claims. Compare Cattin v. General Motors Corp., 612 F. Supp. 948, 950 (E.D. Mich. 1985) (no preemption) with Shaw v. International Association of Machines & Aerospace Workers Pension Plan, 563 F. Supp. 653, 659 (C.D. Cal. 1983) (preemption). A decision by this Court is necessary to resolve these conflicts.

The Fourth Circuit erroneously ruled that the state law claims "relate to" an

employee benefit plan. Instead, these claims relate to the conduct of the respondents rather than to the plan. By definition, the term "state law" is restricted to laws affecting the "terms and conditions" of employee benefit plans, 29 U.S.C. § 1144(c)(2), and several courts have so ruled. See, e.g., Hood v. Prudential Insurance Co. of America, 460 So. 2d 1227, 1230 (Ala. 1984) (claim of bad faith refusal to pay benefits does not affect terms and conditions of plan and is not preempted); Carpenters Health & Welfare Trust Fund v. Darnas Corp., ___ Cal. App. 3d ___, 222 Cal. Rptr. 668, 671 (1986) (ERISA preempts only laws regulating terms and conditions of plan). The lower court's ruling is also contrary to the general intent of ERISA to protect the interests of participants in employee benefit plans and their beneficiaries, 29 U.S.C. § 1001(b), and to provide "the full range of legal and equitable remedies available in both state and federal courts" to injured persons. H.R. Rep. No. 93-533, 93rd Cong., 2d Sess. re-

printed in 1974 U.S. Code Cong. and Ad. News, 4639, 4655.

The preemption provisions of ERISA are also subject to the qualification that a law which "regulates insurance" is not preempted. 29 U.S.C. § 1144(b)(2)(A). In Metropolitan Life Insurance Co. v. Massachusetts, 105 S. Ct. 2380 (1985), this Court rejected the contention that this "insurance saving clause" applied only to "traditional" insurance laws. The court's decision in Metropolitan Life, however, did not set forth any basic guidelines for determining when a law "regulates insurance."

Because of the burgeoning growth of employee benefit plans and the expanding influence of insurance companies on those plans, it is essential that this Court consider the extent to which state laws are applicable to insurance companies when they act as plan administrators of self-insured plans. Various courts have indicated that insurance companies should be subject to state laws, notwithstanding ERISA, where the

law relates to the conduct of the company rather than to the benefits of the plan. See, e.g., American Progressive Life & Health Insurance Co. of New York v. Corcoran, 715 F.2d 784, 787 (2d Cir. 1983) (no preemption where law related to conduct of business by insurance company rather than to plan); Kanne v. Connecticut General Life Insurance Co., 607 F. Supp. 899, 904-905 (C.D. Cal. 1985) ("laws regulating an insurance company or policy from an insurance company are saved from preemption"); Hood v. Prudential Insurance Co. of America, supra. Such a result is consistent with the broad remedial purposes of ERISA.

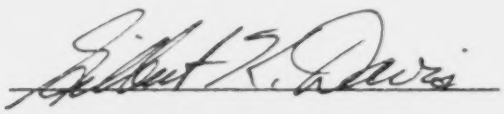
The Fourth Circuit's construction of the phrase "regulates insurance" was drawn too narrowly. ERISA is a remedial statute, and it should be liberally construed to carry out its purpose. Peyton v. Rowe, 391 U.S. 54, 65 (1968). It would be incongruous if a statute which was intended to increase the remedies available to plan participants and beneficiaries were construed to deny remedies

beneficiaries were construed to deny remedies traditionally available to injured parties. Unless it is reversed, the Fourth Circuit's decision could leave many injured participants and beneficiaries without an adequate remedy, particularly if punitive damages are found unavailable under ERISA.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Fourth Circuit.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of the foregoing Petition for Writ of Certiorari, filed on behalf of Petitioner Eleanor Powell were duly served upon the Respondents Chesapeake and Potomac Telephone Company of Virginia, Connecticut General Life Insurance Company and American Telephone and Telegraph, Inc. by placing same in the United States Mail first class postage prepaid, certified return receipt requested, addressed to: 4-17-86

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APPENDIX A

No. 85-1072

Eleanor Powell,

Appellant,

versus

Chesapeake and Potomac Telephone Company of Virginia; Connecticut General Life Insurance Company, a Cigna Company, and American Telephone and Telegraph, Inc., a New York Corporation,

Appellees.

and

AT&T Communications of Virginia, Inc.,

Defendant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Albert V. Bryan, Jr., Chief District Judge. (C/A 84-554)

Argued November 8, 1985.
Decided December 18, 1985

Before WIDENER and PHILLIPS, Circuit Judges, and HILTON, United States District Judge for the Eastern District of Virginia, sitting by designation.

Diane H. Mahshie (James R. Tate; Tate and Bywater, Ltd. on brief) for Appellant; Jeffrey Anne Tatum (Adams, Duque & Hazeltine on brief); Stephen M. Colangelo (Boothe, Prichard & Dudley; Rodney H. Glover; Thomas & Riske on brief) for Appellees.

PHILLIPS, Circuit Judge:

Eleanor Powell, a former employee of C&P Telephone Company of Virginia (C&P) and a beneficiary under its self-funded employee benefit plan (the Plan), sued that company, its former parent, AT&T, and Connecticut General Life Insurance Company (Connecticut General), the Plan's administrator, for the breach of various fiduciary duties under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 et seq., in the handling of her claim for disability benefits. 1/ Although she had received all the benefits to which she was entitled, Powell sought $5 million in extracontractual and punitive damages under ERISA, and also sought

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1 Specifically, the complaint alleges that C&P and Connecticut General failed to discharge their fiduciary duties solely in the interest of Plan beneficiaries pursuant to 29 U.S.C. § 1104(a)(1); breached their duties of disclosure under 29 U.S.C. § 1021; and failed to provide Powell with adequate written notice of termination, as required by 29 U.S.C. § 1133(1).

court's pendent jurisdiction over Virginia state claims for intentional infliction of emotional distress, breach of an implied covenant of good faith and fair dealing, breach of contract, and violation of Virginia's Unfair Trade Practices Act, Va. Code § 38.1-49, et seq. (1950), based on the same alleged misconduct as gave rise to her federal cause of action under ERISA. The district court granted the defendants' motions for summary judgment and dismissed all of Powell's claims. We agree with the district court that Powell's state law claims are preempted by ERISA, and that extracontractual and punitive damages are not, in these circumstances, available under ERISA, and we therefore affirm.

I

Powell received disability benefits under the Plan from February 1978 through May 1983. She complains of constant harassment by C&P and Connecticut General throughout this period, causing her and her son emotional distress and precipitating her

divorce. According to Powell, the appellees repeatedly demanded unnecessary medical reports, refused to provide her attorney with copies of her claim file, and unjustifiably withheld benefit payments on two occasions.

Powell's benefits were terminated in June 1983, after she received a substantial Social Security award, which represented monthly benefits retroactive to July 1977. When combined with the Social Security award, Powell's Plan benefits exceeded 50% of her base pay prior to disability, the benefits ceiling under the Plan. Powell refused C&P's request to refund the overpayment.

Thereafter, Powell filed this action and the defendants counterclaimed for a refund of benefits. The counterclaim was nonsuited after Powell's complaint was dismissed, and this appeal followed.

II

A. Preemption of State Law Claims.

With certain stated exceptions, 2/ ERISA preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" governed by ERISA. 29 U.S.C. § 1144(a). "State law" is defined to include "all laws, decisions, rules regulations, or other state action having the effect of law, of any State." 29 U.S.C. § 1144(c)(1).

In Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 96-97 (1983), the Supreme Court, citing legislative history and referring to the language and structure of the statute, construed the preemption clause in its broadest sense, and held that "[a] law 'relates to' an employee benefit plan . . . if it has a connection with or reference to

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2 The most important of these exceptions allow continued operation of state insurance, banking, and securities laws, 29 U.S.C. § 1144(b)(2)(A), and generally applicable criminal laws, 29 U.S.C. § 1144(b)(4).

such a plan." Thus, the scope of § 1144(a) is not limited to state laws "specifically designed to affect employee benefit plans." Id. at 98.

The state laws at issue in Shaw, the New York Human Rights Law (prohibiting discrimination in employment plans on the basis of pregnancy), and New York's Disability Benefits Law (requiring employers to pay sick-leave benefits to employees unable to work due to pregnancy), "clearly 'relate to'" employee benefit plans. Id. at 97. The Court observed, however, that some state actions may affect employee benefits plans in "too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan." Id. at 100, n.21. This category includes, for example, state garnishment of a spouse's pension income to enforce alimony and support orders. Id.; citing American Telephone and Telegraph Co. v. Merry, 592 F.2d 118 (2d Cir. 1979).

In this case, none of the state laws under which Powell claims relief have any

intrinsic connection with employee benefit plans. The question is therefore whether state law claims which relate to the administration of an ERISA-governed plan, but which arise under general state laws which themselves have no impact on employee benefit plans, are within the scope of ERISA pre-emption. Given the "unparalleled breadth" of the preemption clause, Holland v. Burlington Industries, Inc., No. 84-2241(L), slip op. at 17 (4th Cir. Sept. 3, 1985), and the broad remedial policy of ERISA, we hold that state laws, insofar as they are invoked by beneficiaries claiming relief for injuries arising out of the administration of employee benefit plans, "relate to" such plans and, absent an applicable exemption, are preempted by ERISA.

The preemption clause effectuates a broad remedial policy to protect the interests of participants in ERISA-governed plans and their beneficiaries "by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee

benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts." 29 U.S.C. § 1001(b). Thus, ERISA imposes extensive duties on plan administrators, 29 U.S.C. §§ 1101-1114, and provides a comprehensive scheme for the criminal and civil enforcement of fiduciary obligations, 29 U.S.C. §§ 1131-1132.3/

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3 Under 29 U.S.C. § 1132, entitled "Civil enforcement," a plan participant or beneficiary may sue to recover benefits due under the plan, to enforce his rights under the plan, or to clarify his rights to future benefits under the plan, § 1132(a)(1)(B); or, if the plan administrator fails or refuses to comply with a request for certain information, a beneficiary may recover, subject to the court's discretion, up to $100 a day from such failure or refusal, § 1132(a)(1)(A); or, a participant, beneficiary, or fiduciary may bring an action to enjoin administrative acts which violate ERISA or the terms of the plan or to obtain "other appropriate equitable relief" to redress such violations or to enforce provisions of ERISA or the terms of the plan. § 1132(a)(3). A plan may recover from its administrator any losses resulting from the breach of fiduciary duties and may seek "such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary," § 1109(a). Any person who willfully violates the provisions of ERISA may be fined, upon conviction, up to $5,000, or imprisoned up to one year, or both, and in the case of violations by other than an individual, a fine of up to $100,000 may be imposed, § 1131. For other remedies, including those available to the Secretary, see §§ 1132(a)(4), (a)(5), (a)(6), (b); for availability of attorney's fees and costs, see § 1132(g).

To the extent that ERISA redresses the mishandling of benefits claims or other maladministration of employee benefit plans, it preempts analogous causes of action, whatever their form or label under state law. See Dependahl v. Falstaff Brewing Corp., 653 F.2d 1208, 1215-16 (8th Cir. 1981) ("If Congress has already provided a remedy [under ERISA], . . . the state law is preempted, regardless of whether or not a conflict exists which involves a direct interference by the state law with [ERISA]."). A contrary rule would undermine ERISA's important policy of promoting uniformity in employee benefit laws, reflected in the legislative history, in the Act's declaration of policy, and in the preemption clause itself, by creating the "potential . . . for conflicting employer obligations and variable standards of recovery." Holland, No. 84-2241(L), slip op. at 17-18. Accordingly, the state law claims on this case, all of which relate exclusively to alleged breaches of fiduciary responsibility in the administration of C&P's

employee benefit plan, "relate to" the plan and, unless an exception applies, are preempted, leaving Powell to such remedies as are available under ERISA.

This analysis comports with several recent Ninth Circuit decisions in which that court concluded that state claims based on the maladministration of employee benefit plans are preempted by ERISA, even where the state statutory and common law under which the claims arise bears no inherent connection with ERISA-governed plans. See Ellenburg v. Brockway, Inc., 763 F.2d 1091, 1095 (9th Cir. 1985); Scott v. Gulf Oil Corp., 754 F.2d 1499, 1504-05 (9th Cir. 1985); Blau v. Del Monte Corp., 748 F.2d 1348, 1356 (9th Cir. 1984); Russell v. Massachusetts Mutual Life Insurance Co., 722 F.2d 482, 487-88 (9th Cir. 1983), rev'd on other grounds, ___ U.S. ___, 53 U.S.L.W. 4938 (U.S. June 27, 1985). See also Gilbert v. Burlington Industries, Inc., 765 F.2d 320, 327 (2d Cir. 1985).

Powell contends that even if her state law claims are within the scope of

ERISA's preemption provision, her claims for breach of an implied covenant of good faith and fair dealing and for violations of the Virginia Unfair Trade Practices Act, both of which purport to impose duties on insurers,4/ are nevertheless rescued from preemption by an "insurance saving clause," which provides that ERISA does not "exempt or relieve any person from any law of any State which regulates insurance. . . ." 29 U.S.C. § 1144(b)(2)(A). We disagree. The insurance

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4 The Virginia Unfair Trade Practices Act constitutes Article 6 of Virginia's Insurance Code and declares as its purpose the regulation of trade practices in the business of insurance. Specifically, Powell alleges in her complaint that the defendants violated § 38.1-52.1 which provides that "[n]o person shall make, issue, [or] circulate . . . any estimate, illustration, circular, statement, sales presentation, omission, or comparison which (1) Misrepresents the benefits, advantages, conditions or terms of any insurance policy."

The implied covenant of good faith arises, in certain circumstances, from the "relationship of confidence and trust . . . between the insurer and the insured which imposes upon the insurer the duty to deal fairly with the insured in the handling and disposition of any claim covered by the policy." Aetna Casualty & Surety Co. v. Price, 206 Va. 749, 761, 146 S.E.2d 220, 227-28 (1966).

saving clause is limited by the so-called "deemer clause," which provides that no employee benefit plan "shall be deemed to be an insurance company or other insurer . . . or to be engaged in the business of insurance . . . for purposes of any law of any State purporting to regulate insurance companies [or] insurance contracts . . . ." 29 U.S.C. § 1144(b)(2)(B). Thus, C&P cannot be deemed to be an insurer or otherwise engaged in the business of insurance by virtue of its sponsorship of the Plan and Powell's claims against C&P under state laws regulating insurance are not exempted from preemption by the insurance saving clause.

Since Connecticut General is not an "employee benefit plan," the deemer clause is inapplicable to it. See 29 U.S.C. § 1144(b)(2)(B). Powell contends that as an insurance company, Connecticut General is subject to state laws regulating insurance, including the implied covenant of good faith and fair dealing and the Virginia Unfair Trade Practices Act, and that these claims

are therefore saved from preemption by the insurance saving clause, § 1144(b)(2)(A).

We read the insurance savings clause, however, to exempt from ERISA's preemptive effect only those state insurance laws that regulate the "business of insurance." Regulation of the "business of insurance" is expressly reserved to the states by the McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1115, 5/ and ERISA's insurance saving clause, which is similarly worded and which reflects the concerns of McCarran-Ferguson, is most reasonably construed to cover the same category of state insurance regulation. See Metropolitan Life Insurance Co. v. Massachusetts, ___ U.S. ___, 53 U.S.L.W. 4616, 4621 n.21 (U.S. June 3, 1985) ("The ERISA saving clause . . . appears to have been designed to preserve the McCarran-Ferguson Act's reservation of the business of

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5 The McCarran-Ferguson Act provides, in pertinent part, that "No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance . . . ." 15 U.S.C. § 1012(b).

insurance to the States.").

The primary features of an insurance contract are the spreading and underwriting of a policyholder's risk. Group Life & Health Insurance Co. v. Royal Drug Co., 440 U.S. 205, 211 (1979). In enacting the McCarran-Ferguson Act, "Congress was concerned with the type of state regulation that centers around the contract of insurance . . . ." SEC v. National Securities, Inc., 393 U.S. 453, 460 (1969). The Act did not, however, "purport to make the States supreme in regulating all the activities of insurance companies; . . . only when they are engaged in the 'business of insurance' does the statute apply." Id. at 459-60.

In its role as Plan administrator, Connecticut General neither spreads nor underwrites insurance risks; there is no insurance policy or contract. Rather, Connecticut General provides certain purely administrative claims processing functions pursuant to an administrative services agreement with the Plan's sponsor,

C&P.6/ Thus, notwithstanding that Virginia's implied covenant of fair dealing and Unfair Trade Practices Act may in some circumstances reach even the purely administrative activities of insurers, 7/ such regulation would not bear upon the "business of insurance" within contemplation of ERISA's insurance saving clause and thus is not saved from preemption by ERISA.

B. Availability of Extracontractual and Punitive Damages Under ERISA

Having received all of the benefits to which she is entitled, Powell seeks extra-

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6 Under the administrative services agreement, Connecticut General agreed, among other things, to provide standard claim forms for the administration of the plan; to determine the propriety of claims in accordance with C&P's claims administrations procedures and practices; to issue checks, drawn against C&P's funds, in payment of clams; to prepare monthly and annual reports; and to review each claim that has been denied for compliance with ERISA when the claimant requests such review.

7 We express no opinion whether such private causes of action, in another context, would be cognizable under Virginia law. It is worth noting, however, that the Virginia Unfair Trade Practices Act also purports to regulate "the business of insurance in accordance with the intent of Congress" as expressed in the McCarran-Ferguson Act. Va. Code § 38.1-49 (1950).

contractual and punitive relief under ERISA to compensate her for various alleged physical ailments, the decline of her marriage, her son's emotional distress, and the deterioration of her mental health, on account of the mishandling of C&P and Connecticut General of her disability claim. Powell contends that such extraordinary relief is available under 29 U.S.C. § 1132(a)(3) which authorizes a civil action by a plan beneficiary "(A) to enjoin any act or practice which violates any provision of [ERISA] or the terms of the plan, or (B) to obtain other appropriate equitable relief, (i) to redress such violations or (ii) to enforce any provisions of [ERISA] or terms of the plan." (Emphasis added.) In Massachusetts Mutual Life Insurance Co. v. Russell, ___ U.S. ___, 53 U.S.L.W. 4938 (U.S. June 27, 1985), the Supreme Court held that extracontractual and punitive damages are not available under § 1132(a)(1)(B), which authorizes a civil action by a plan participant or beneficiary "to recover benefits due to him under the

terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." The question whether or to what extent extracontractual and punitive relief is authorized by way of the catchall provision in § 1132(a)(3) for "other appropriate equitable relief" was expressly reserved. Id. at 4940 n.5.

Powell urges that notwithstanding the use of the word "equitable" in § 1132(a)(3) and its implications for excluding the damage remedies she seeks, ERISA incorporates the fiduciary standards and principles of trust law, the violation of which, although ordinarily redressed in equity, may nevertheless give rise to monetary damages in appropriate cases. The legislative history supports Powell's theory that Congress intended to import into ERISA principles of trust law, see H.R. Rep. No. 533, 93d Cong., 1st Sess. 11 (1973), as does the language of 29 U.S.C. § 1104(a), which expressly incorporates a general "prudent man" standard

of care for ERISA fiduciaries.

Powell's argument is self-defeating, however, because even assuming that "other appropriate equitable relief" may, in certain circumstances, include extracontractual or punitive damages, such relief is generally not available in an action by a beneficiary against a trustee for breach of trust. See Restatement (Second) of Trusts § 205 (1959) (liability for breach of trust is limited to (a) loss in value of trust estate; (b) profits accrued by trustee; or (c) profits lost to estate); G. Bogert & G. Bogert, the Law of Trusts & Trustees, § 862 (2d ed. 1982) (trustee is usually charged only with the loss in value of the trust estate although exemplary damages are occasionally awarded in a few states where malice or fraud is involved); A. Scott, The Law of Trusts, § 198.1 (1967) ("where the trustee is not under an immediate and unconditional duty to pay money to the beneficiary, the beneficiary cannot maintain an action at law against him."). Thus, the provision for "other

appropriate equitable relief," whatever it embraces, cannot be held to authorize extracontractual or punitive damages for the breach of a plan administrator's fiduciary duties under ERISA. 8/

Accordingly, the district court properly granted the defendants' motions for summary judgment as to Powell's claims for extracontractual and punitive damages under ERISA, and her complaint was properly dismissed.

AFFIRMED.

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8 We observe that the maladministration alleged by Powell does not rise to a "willful" violation of ERISA for purposes of the Act's criminal enforcement provision, 29 U.S.C. § 1131.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

ELEANOR POWELL, Plaintiff,	)	
V.	)	CIVIL ACTION NO. 84-554-A
THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF VIRGINIA, et al., Defendants.	)	

ORDER

For the reasons stated from the bench, the court finding that the plaintiff's complaint is grounded basically in the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001, et seq., the civil enforcement provisions of which are contained in 29 U.S.C. § 1132; that the defendant American Telephone & Telegraph Company, Inc. (AT&T) owed no duty to the plaintiff under the circumstances of this case; that the plaintiff has been paid all the contractual benefits pursuant to the plan adopted by her employer, The Chesapeake and Potomac Telephone Company of Virginia (C & P) to which

she was entitled; that in its capacity as administrator of the plan, Connecticut General Life Insurance Company (Connecticut General) was not engaging in the business of insurance so as to invoke 29 U.S.C. § 1144(b)(2)(A); and the court being of the opinion, in accordance with Shaw v Delta Airlines, Inc., 463 U.S. 87 (1983); Dependahl v. Falstaff Brewing Corp., 653 F.2d 1208 (1981); and Russell v. Mass. Mut. Life Ins. Co., 722 F.2d 482 (1983), that Counts II, III, IV and V, being counts for intentional infliction of emotional distress, misrepresentation of disability plan and benefits in violation of Va. Code § 38.1-49, breach of implied duty of fair dealing, and breach of contract, are preempted by ERISA, and that the plaintiff is not entitled to extra contractual damages or punitive damages (contra Russell, supra), it is hereby ORDERED that:

1. The defendants' motion for summary judgment on Counts II, III, IV and V of the complaint is granted on the grounds that those counts are preempted by ERISA.

2. The motion of the defendant At&T for summary judgment on Count I is granted because of the lack of involvement of that defendant in any ERISA violation.

3. The motion of the defendant C & P and Connecticut General Life Insurance Company for summary judgment on Count I is granted for the reason that the only damages pursuant to ERISA to which the plaintiff would be entitled have already been paid, and the plaintiff is not entitled to punitive damages.

4. The complaint is dismissed.

_____/s/_____

Alexandria, Virginia
December 21st, 1984

APPENDIX C

29 U.S.C.

§ 1021. Duty of disclosure and reporting

(a) Summary plan description and information to be furnished to participants and beneficiaries

The administrator of each employee benefit plan shall cause to be furnished in accordance with section 1024(b) of this title to each participant covered under the plan and to each beneficiary who is receiving benefits under the plan--

(1) a summary plan description described in section 1022(a)(1) of this title; and

(2) the information described in section 1024(b)(3) and 1025(a) and (c) of this title

(b) Plan description, modifications and changes, and reports to be filed with Secretary of Labor

The administrator shall, in accordance with section 1024(a) of this title, file with the Secretary--

(1) the summary plan description described in section 1022(a)(1) of this title;

(2) a plan description containing the matter required in section 1022(b) of this title;

(3) modifications and changes referred to in section 1022(a)(2) of this title;

(4) the annual report containing the information required by section 1023 of this title; and

(5) terminal and supplementary reports as required by subsection (c) of this

section.

§ 1104. Fiduciary duties

(a) Prudent man standard of care

(1) Subject to sections 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and---

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan

(B) with the care, skill, prudence, and diligence under the circumstances when prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter or subchapter III of this chapter.

§ 1132. Civil enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought--

(1) by a participant or beneficiary--

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter of the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 1025(c) of this title;

(c) Administrator's refusal to supply requested information

Any administrator who fails or refuses to comply with a request by this subchapter to furnish a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

(d) Status of employee benefit plan as entity

(1) An employee benefit plan may sue or

be sued under this subchapter as an entity. Service of summons, supoena [sic], or other legal process of a court upon a trustee or an admininstrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.

(2) Any money judgment under this subchapter against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this subchapter.

(e) Jurisdiction

(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

(2) Where an action under this subchapter is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(f) Amount in controversy; citizenship of parties

The district courts of the United States shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

§ 1133. Claims procedure

In accordance with regulations of the Secretary, every employee benefit plan shall--

(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and

(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

§ 1144. Other laws

(a) Supersedure; effective date

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

(b) Construction and application

(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 1003(a) of this title, which is not exempt under section 1003(b) of this title (other than a plan established primarily for the purpose of providing death benefits), nor any trust established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contract, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 1136 of this title.

(c) Definitions

For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter.

Va. Code Ann.

§ 38.1-1. Definitions.

(10) "Insurance transaction" and "insurance business" includes solicitation, negotiations preliminary to execution, and execution of an insurance contract, and the transaction of matters subsequent to execution of the contract and arising out of it.

§ 38.1-50. Definitions.--When used in this article: A. "Person" means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers and adjusters. "Person" shall also mean medical, surgical, hospital, dental, and optometric service plans as provided for in chapters 23, 24 and 25 (§§ 38.1-810 to 38.1-862) of Title 38.1 of the code of Virginia. For the purposes of this article, such service plans shall be deemed to be engaged in the business of insurance.

§ 38.1-52.1. Misrepresentations and false advertising of insurance policies.--No person shall make, issue, circulate, or cause to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:

1. Misrepresents the benefits, advantages, conditions or terms of any insurance policy;

2. Misrepresents the dividends or share of the surplus to be received on any insurance policy;

3. Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy;

4. Is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates;

5. Uses any name or title of any insurance policy or class of insurance policies which misrepresents the true nature thereof;

6. Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy;

7. Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

8. Misrepresents any insurance policy as being a share or shares of stock.